

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.08.2018	Delivered on 29.08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.625 of 2018

Sellam

... Appellant

-vs-

1.Ramamurthy
2.ICICI Lambard Insurance Company Ltd.,
No.5, United Arcade,
III Floor, Karur Bypass Road,
Annamalai Nagar, Trichy - 18.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur made in MCOP.No.670 of 2016 dated 20.09.2017.

For Appellant : Mr.P.Paramasiva Doss

For Respondents : Mrs.R.Sree Vidhya for R2
R1 - No appearance

J U D G M E N T

R.SUBRAMANIAN, J.

The above appeal is at the instance of the claimant in MCOP.No.670 of 2016 seeking enhancement. The appellant who suffered injuries in the motor accident that took place on 05.06.2016 had moved the Motor Accident Claims Tribunal, Perambalur seeking a compensation of Rs.50,00,000/- for the injuries suffered by her.

2. According to the claimant/ appellant when she was waiting for the bus near Alathur Gate bus stop on the Trichy to Chennai NH-45, the car belonging to the 1st respondent coming from North to South driven in a rash and negligent manner dashed against the petitioner, due to the impact, the petitioner sustained

severe injuries in her vertebrae, head and hip bone. There were also fractures in both her hands and legs. She was rushed to the Government Hospital, Perambalur and thereafter taken for better treatment to KMC Hospital, Trichy. She was treated as an inpatient from 05.06.2016 and nearly 12 surgeries were performed on her. Claiming that she was working as a coolie and earning a sum of Rs.10,000/- per month, she sought for a compensation as aforesaid. A sum of Rs.20,00,000/- was claimed as medical expenses.

3. The claim petition was resisted by the Insurance Company viz., 2nd respondent denying the claim of the appellant that the accident occurred due to the rash and negligent driving of the car. According to the Insurance Company, the appellant and her daughter were standing near the divider on the National Highways and talking to each other, suddenly the claimant/ appellant jumped on the road and ran towards East for crossing the road. Despite bonafide attempts by the driver to avoid the accident he could not succeed because of the sudden act of the appellant in crossing the road without any precaution. The Insurance Company also denied the age, monthly income as well as avocation of the claimant/ appellant.

4. The Tribunal on a consideration of the evidence on record as well as the fact that the accident had occurred because the claimant/ appellant attempted to cross the road which is admittedly a National Highway without taking proper precautions, held that the claimant/ appellant had contributed towards the cause of the accident and the contributory negligence on her part was quantified at 10% while negligence on the part of the driver of the car was fixed at 90%.

5. With reference to the quantum of compensation, the claimant/ appellant had relied upon the wound certificate marked as Ex.A9 and disability certificate marked as Ex.A10. The Tribunal on the basis of the above documents concluded that there was no functional disability. The Tribunal however concluded that the claimant/ appellant had suffered partial permanent disability.

6. On the above conclusion, the Tribunal decided to determine the compensation based on unit method. Relying upon the judgment of the Hon'ble Supreme Court in National Insurance Company Limited Vs. G.Ramesh reported in 2013 (2) TN MAC 583, the Tribunal granted a sum of Rs.1,65,000/- towards permanent disability. The said sum was arrived at taking Rs.3,000/- as

compensation as per the percentage of disability and the disability was assessed at 55%. The Tribunal also granted Rs.8,000/- towards loss of earning capacity and a sum of Rs.8,04,946/- was granted towards medical expenses, based on the bills produced. A sum of Rs.40,000/- was awarded towards pain and sufferings and a sum of Rs.3,000/- towards Nutrition and Attender charges and a sum of Rs.2,400/- towards transportation charges. In all the Tribunal awarded Rs.10,23,346/-. After deducting 10% on the said amount, the Tribunal had arrived at a compensation payable by the Insurance Company at Rs.9,21,011/-. It is this quantum of compensation fixed by the Tribunal that is the subject matter of challenge in this appeal.

7. We have heard Mr.P.Paramasiva Doss, learned counsel appearing for the appellant and Mrs.R.Sree Vidhya, learned counsel appearing for the 2nd respondent. The 1st respondent viz., the owner of the car insured with the 2nd respondent had remained absent before the Tribunal and hence notice to the 1st respondent in this appeal is dispensed with.

8. Mr.P.Paramasiva Doss, learned counsel appearing for the appellant would rely upon the disability certificate issued by the District Differently Abled Welfare Officer, Government of Tamil Nadu which states that the functional disability is about 60%. The learned counsel would also invite our attention to the wound certificate issued by the Kauvery Hospital, Trichy, wherein the details of the injuries suffered by the petitioner/claimant are set out as follows:

1. Severe Head Injury showing deep Laceration over the Parieto-Occipital region 7x2x1 cm with fracture (#) contusion in the frontal region.

2. Severe Neck Injury involving C-Spine anterior Arch C1 and C2 Vertebrae fracture (#) C.Cb Post treatment.

3. Severe Fascial Injury showing fracture (#) (R) Nazal Bone with (L) IIIrd Nerve Palsy.

4. Injury to Back - involving all the Lumbar Vertebrae showing fracture (#) Transverse process of all Lumbar Vertebrae C Sacruus (R) fracture (#).

5. Injury to hip Bone showing fracture (#) Superior and Inferior Rami of Pubic Bone on both sides.

6. Pain/ Tenderness with deformity over (L) leg showing (L) Tibial Bone fracture (#) C Compartment Syndrome.

7. Pain/ Tenderness C Deformity showing fracture (#) both Bone (R) leg C compartmental Syndrome.

8. Pain/ Swelling/ Deformity showing fracture (#) of digital Radius - (R) Wrist.

9. Relying upon the aforesaid wound certificate, as well as the disability certificate Mr.P.Paramasiva Doss, learned counsel appearing for the appellant would submit that from the nature of injuries suffered by her particularly injuries to her vertebrae as well as the tibia she cannot be expected to do any work. Therefore, the Tribunal was not right in holding that there was no functional disability.

10. The fact remains that there were severe injuries on the vertebral column which had resulted in transverse process of all lumbar vertebrae, it is common knowledge that even a compression of the vertebral bones leads to severe functional disability. While so, we are unable to appreciate the conclusions of the Tribunal regarding the functional disability. The disability certificate issued by the District Differently Abled Welfare Officer shows that the disability is about 60%. There is no contra evidence let in on the side of the Insurance Company to conclude that the disability was anywhere less than 60%. The Insurance Company has not chosen to examine any medical expert in order to dilute the contents of Ex.P11.

11. We are therefore, of the opinion that the Tribunal should have adopted the multiplier method. The accident had taken place on 05.06.2016, therefore as per the prevailing wages even an agricultural coolie would have earned not less than Rs.10,000/- per month. Therefore, we are of the opinion that the monthly income of the appellant/ claimant could be safely taken at Rs.10,000/- per month. The Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in 2010 (2) TN MAC 581 (SC) has set out the principles on which the percentage of permanent disability that has an impact on the earning capacity should be assessed.

12. Once it is shown that the permanent disability results in a functional disability the loss of earning power should be decided based on the actual functional disability. From the nature of injuries caused, we are sure that the appellant/ claimant cannot pursue her old avocation of an agricultural coolie anymore. From the wound certificate it is seen that the appellant had suffered severe injuries on her vertebral column as well as fractures in the pubic bone on both sides apart from a fracture of the right tibia. These fractures would definitely

have the effect of crippling the appellant/ claimant. We therefore, determine the functional disability at 60%. The monthly loss of income would be Rs.10,000/-. It is not in dispute that the claimant appellant is aged about 48 years at the time of accident, therefore, the multiplier to be applied is 13. The loss of income is determined as follows:

$$\text{Rs.10,000} \times \frac{60}{100} \times 12 \times 13 = \text{Rs.9,36,000/-}$$

13. The Tribunal has awarded loss of earning at Rs.4,000/- per month for a period of two months. It is seen that the claimant/ appellant has been inpatient in Kauvery Hospital for nearly one month. Therefore, the Tribunal was not right in fixing the loss of income at Rs.8,000/-, at Rs.4,000/- per month for the period of two months. The loss of income is therefore fixed at Rs.10,000/- per month for a period of four months equivalent to Rs.40,000/-. The award of the Tribunal is modified as follows:-

Loss of Income [10,000 x 4]	=	40,000
For pain and sufferings	=	40,000
Nutrition and attender	=	3,000
Pecuniary loss due to functional disability	=	9,36,000
Medical expenses	=	8,04,946
Transportation	=	2,400
Total	=	18,26,346

14. Since the Tribunal has found that the claimant/ appellant had contributed to the extent of 10% of the accident, 10% of the sum of Rs.18,26,346/- is to be deducted towards contributory negligence. Therefore, the claimant would be entitled to Rs.16,43,711.40/- which is rounded off to Rs.16,45,000/- with proportionate interests and costs.

15. In fine, the appeal is partly allowed as indicated above. The Insurance Company is given six (6) weeks time to deposit the enhanced award amount. There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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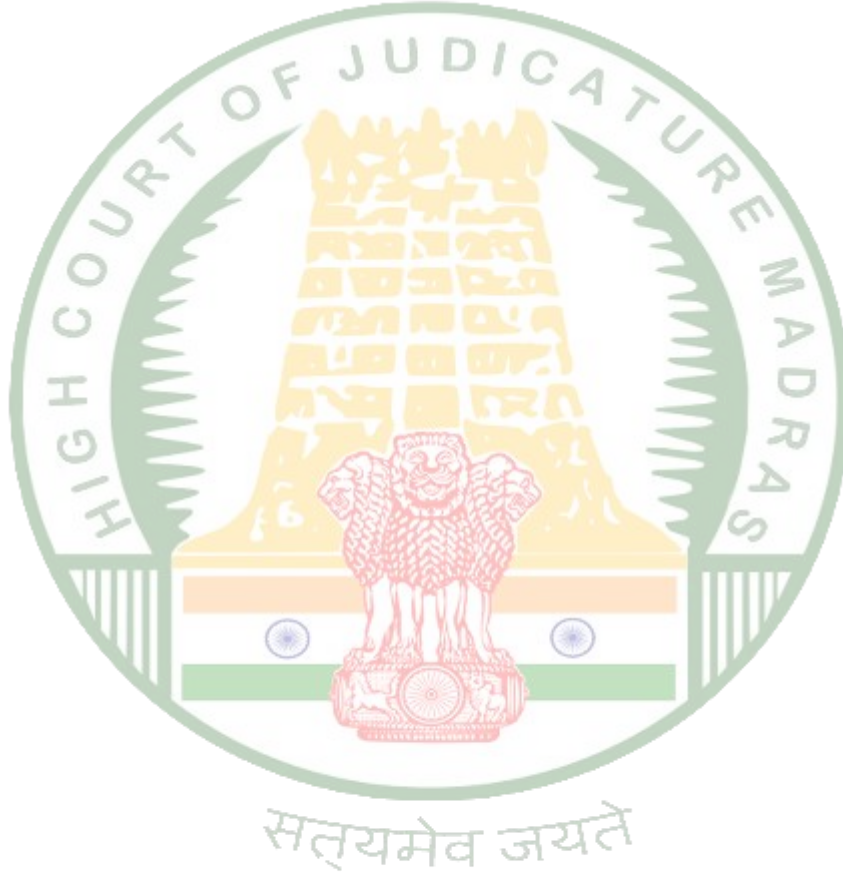
The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Perambalur.

+1cc to Mr.P.Paramasiva Doss, Advocate, S.R.No.60074

+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.69231

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GSP (CO)
CS/25/10/2018



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